

REMARKS

Claims 10, 11 and 18 are currently pending in the application. Applicant has amended Claim 10 to correct informalities of the claim. No new matter has been introduced. Applicant respectfully requests reconsideration of the pending claims in light of the following remarks.

The Examiner has rejected Claim 10 under 35 U.S.C. §112, second paragraph, as allegedly indefinite. Specifically, the Examiner has rejected the recitations, “the capsule is formed exclusively of cyclic olefin copolymer”, and further suggested replacement of “is formed exclusively of” with “consists of”. Applicant has amended Claim 10 as suggested to overcome the rejection.

The Examiner has rejected Claims 10 and 11 under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 3,757,979 to Berghahn (hereinafter “Berghahn”) in view of U.S. Patent No. 5,853,833 to Sudo (hereinafter “Sudo ’833”). Applicant respectfully submits that the rejection is overcome in light of the following remarks.

Claim 10 recites a package for holding a dental implant. The package includes, *inter alia*, a capsule consisting of cyclic olefin copolymer with an impermeability to moisture of less than 5% fluid loss per year and a cap formed of low-density-polyethylene.

Berghahn discloses, “a container with a special safety closure-bottle assembly designed to deter children from opening such bottles containing hazardous substances” (*see*, Col. 1, Lines 3-8 of Berghahn). The container of Berghahn is specifically designed for pills and non-liquid medicaments, as evidenced by the description

at Col. 1, Lines 5-8 and the mechanical structure of the container. Thus, Berghahn does not provide any suitable premise for a liquid container having predetermined moisture impermeability and/or a special material.

Moreover, Berghahn is completely silent on “cyclic olefin copolymer” (hereinafter “COC”), as evidenced by the statement in the Office Action, “Berghahn fails to teach that the capsule is formed exclusively of cyclic olefin copolymer because Berghahn does not specifically teach cyclic olefin copolymer” (*see*, Page 3, last three lines of the Action).

In light of the inherent deficiencies of Berghahn, the Examiner has turned to Sudo ‘833 for the alleged teaching of a container for medicine formed exclusively of COC, citing Col. 3, Lines 40-49 of Sudo ‘833.

The Examiner further alleged, “There is no indication in Berghahn that the bottle is anything other than a monolayer bottle” (*see*, Page 3, Lines 12-13 of the Action). Based on the above allegations, the Examiner concluded that it would have been obvious for a person of ordinary skill in the art at the time the invention was made to have formed the capsule of Berghahn exclusively out of the cyclic olefin copolymer disclosed by Sudo ‘833.

Applicant respectfully disagrees for at least the following reasons.

The intention of Sudo ‘833 is providing a sanitary container and a production process thereof, wherein the container includes a base of COC but necessarily a coating in order to store medicine for a long time (*see*, Col. 1, Lines 6-15 of Sudo ‘833). In particular, Sudo ‘833 aims to find coating materials and production ways for an

excellence in oxygen transmission resistance and nitrogen transmission resistance (*see*, Col. 2, Line 65 - Col. 3, Line 1-2).

Accordingly, all examples of Sudo '833 show different coating materials with the results in reduced oxygen and nitrogen transmission rates (*see*, Example 1 at Col. 7, Lines 52 - Col.8, Line 19; and Example 2 at Col. 8, Lines 22-36). Thus, Sudo '833 is not directed to one material only for manufacturing the container exclusively of this material.

Sudo '833 teaches that COC is used for production of the base container. However, Sudo '833 does not disclose a container material consisting only of cyclic olefin copolymer.

Sudo '833 does not disclose a sanitary container formed exclusively of cyclic olefin copolymer. Sudo '833 teaches the container comprises a base container made of a cyclic olefin polymer and an inorganic coating formed on a surface of the base container (*see*, Col.3, Lines 6-10). Such fact is further evidenced and corroborated by the description that "the sanitary container according to the present invention is equipped with significantly-improved transmission resistance to oxygen and nitrogen owing to the provision of the inorganic coating" (*see*, Col.3, Lines 20-23, *emphasis added*). In other words, the container of Sudo '833, having structurally integrated base container and coating, is NOT made exclusively of cyclic olefin copolymer.

In addition, Sudo '833 is completely silent on a special COC material "with an impermeability to moisture less than 5% fluid loss per year", as recited in Claim 10.

Furthermore, even assuming, *arguendo*, "there is no indication in Berghahn that the bottle is anything other than a monolayer bottle", it does not necessarily mean that

the bottle is formed exclusively of a certain material. In this regard, the Examiner fails to recognize the difference between an article made of a single material and an article constructed out of a single layer.

In sum, neither Berghahn nor Sudo '833, taken alone or in combination, teach or fairly suggest the combination of features recited in Claim 10, from which Claims 11 and 18 depend.

Accordingly, the rejection of Claims 10 and 11 under 35 U.S.C. §103(a) based on the hypothetical combination of Berghahn and Sudo '833 is overcome, and withdrawal thereof is respectfully requested.

The Examiner has further rejected Claim 18 under 35 U.S.C. §103(a) as allegedly unpatentable over Berghahn in view of Sudo '833 and further in view of U.S. Patent No. 5,723,189 to Sudo (hereinafter "Sudo '189"). Applicant respectfully traverses the rejection in light of the following remarks.

Claim 10, from which Claim 18 depends, is discussed above. Berghahn and Sudo '833 are discussed above with respect to Claim 10.

Sudo '189 is relied on to allegedly teach an ampoule within the capsule. Sudo '189 does not remedy the underlying deficiencies of Sudo '833 and Berghahn with respect to the feature of a cap consisting of cyclic olefin copolymer having an impermeability to moisture of less than 5% fluid loss per year.

Thus, none of the references, taken alone or in any combination, teach or fairly suggest the combination of features recited by Claim 10, from which Claim 18 depends.

Accordingly, the rejection of Claim 18 under 35 U.S.C. §103(a) as allegedly unpatentable over the hypothetical combination of Berghahn, Sudo '833 and Sudo '189 is overcome, and withdrawal thereof is respectfully requested.

In view of the foregoing amendments and remarks, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



Peter I. Bernstein
Registration No. 43,497

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
516-742-4343 - Telephone
516-742-4366 - Fax

PIB/HC/ech